

**Before the  
UNITED STATES COPYRIGHT ROYALTY BOARD  
Washington, D.C.**

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**In the Matter of:**

**DETERMINATION OF RATES  
AND TERMS FOR MAKING AND  
DISTRIBUTING PHONORECORDS  
(*Phonorecords IV*)**

**Docket No. 21-CRB-0001-PR  
(2023-2027)**

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**ORDER ON AMAZON’S MOTION TO COMPEL COPYRIGHT OWNERS TO  
COMPLY WITH PRODUCTION COMMITMENTS (eCRB No. 26700)**

On May 24, 2022, Amazon.com Services LLC filed a motion (eCRB No. 26700) requesting that the Judges compel Copyright Owners to comply with their commitments to produce responsive documents in rebuttal discovery relating to Requests 1, 6-8, 12-13, 32, 61-62, 70, 73-74, 77, 80-82, 88-93, and 115 (“Motion”). Copyright Owners filed an Opposition on June 8, 2022. Amazon filed a Reply on June 15, 2022.

In the Motion, Amazon represents that it (and Spotify) served Copyright Owners with requests for production on May 3, 2022, and that Copyright Owners initially agreed to search for and produce responsive documents for most of the requests at issue in the Motion. Motion at 1. Amazon states that on May 17, 2022, the Services and Copyright Owners met and conferred regarding Copyright Owners’ objections to certain requests and Copyright Owners confirmed that they would produce documents responsive to certain requests at issue in the Motion. *Id.* Yet, according to Amazon, as of the date of the filing of the Motion, Copyright Owners had not produced most of the responsive documents that they had committed to produce. *Id.* Amazon concluded that significant deficiencies in Copyright Owners’ production exist for all of the Requests subject to the Motion. *Id.* at 1-2. Amazon contends that the documents they seek are directly related to specific claims Copyright Owners make in their rebuttal testimony and therefore the Judges should compel Copyright Owners to remedy the production deficiencies. *Id.* at 1.

In their Opposition, Copyright Owners assert that they have produced what is reasonably available and responsive in this rebuttal phase. Opposition at 1-2. Copyright Owners note that with the compressed three-week rebuttal discovery period, both sides have continued to produce documents, including as recently as the week in which Copyright Owners filed the Opposition. *Id.* at 2. Copyright Owners contend that the participants are continuing to locate and produce additional rebuttal documents in preparation for the upcoming hearing. *Id.* Copyright Owners

detail the responsive documents that they have produced or agreed to produce or the reasons why they have not produced certain documents. *Id.* at 3-7. Thus, Copyright Owners ask the Judges to deny the Motion because the concerns raised by the Motion are misplaced and/or mooted by the production of documents as agreed by Copyright Owners. *Id.* at 7.

In its reply, Amazon contends that Copyright Owners still have not produced numerous documents that are directly related to their WRS. Reply at 1. Amazon argues that Copyright Owners' assertion that they have produced what is reasonably available and responsive raises more questions than it answers and is insufficient to explain Copyright Owners' failure to produce the responsive documents that Amazon seeks.<sup>1</sup> *Id.*

Amazon details a long list of documents that it contends Copyright Owners are obligated to (or have agreed to) produce but have failed to produce. *Id.* at 2-3, 7. Amazon also contends that Copyright Owners' production is deficient in several instances, suggesting to Amazon that whatever searches Copyright Owners performed were inadequate. *Id.* at 4. Amazon also contends that Copyright Owners' Opposition suggests that Copyright Owners have located privileged documents that are responsive to some of Amazon's requests. *Id.* at 5. Amazon asks the Judges to order Copyright Owners to produce all responsive documents, file a detailed declaration of their search efforts, and produce a privilege log cataloging any responsive documents withheld on the basis of privilege.

For the reasons detailed in the Motion and Reply, the Judges grant the Motion to Compel regarding Amazon Requests 1, 6-8, 12-13, 32, 61-62, 70, 73-74, 77, 80-82, 88-93, and 115. Copyright Owners do not reasonably dispute that the requested documents are directly related to their rebuttal testimony. Therefore, Copyright Owners were obligated to conduct a good-faith search of all responsive documents and to produce them in a timely manner or to explain to Amazon why it had not done so (*e.g.*, no responsive documents existed or Copyright Owners withheld certain documents based on an asserted privilege). Consequently, to the extent they have not already done so, Copyright Owners shall conduct a good-faith search with respect to each Amazon Request identified above and produce all responsive materials no later than **ten days** from the date of this Order. If no responsive documents are found with respect to a particular Request, Copyright owners shall file with the Judges a statement that no responsive documents exist, and a statement of the relevant search efforts they have undertaken. Additionally, no later than **five days** from the date of this Order, Copyright Owners shall file a privilege log cataloging any responsive documents Copyright Owners have already decided to withhold on the basis of privilege, clearly identifying the applicable Request(s), the document(s) withheld, and the privilege(s) asserted.<sup>2</sup>

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<sup>1</sup> Amazon disputes Copyright Owners' contention (Opposition at 2) that it did not comply with the meet-and-confer process, noting that it sent Copyright Owners an email that identified purported deficiencies in their production. Reply at 1. The meet and confer requirement is intended to resolve or narrow disputes before they are presented to the Judges. It is unclear how the email that Amazon describes could, in and of itself, be construed as satisfying the letter or spirit of the meet-and-confer requirement. Nevertheless, Amazon represents that the parties met and conferred on May 17, 2022. Motion at 2. Given Amazon's subsequent email detailing purported deficiencies and Copyright Owners' apparent lack of response, additional meetings during a compressed rebuttal discovery period may not have been warranted.

<sup>2</sup> Copyright Owners shall promptly update the Privilege Log to include any other documents as to which they claim a privilege, in the course of their continuing search for responsive documents as required by this Order.

**PUBLIC VERSION**

Within ten days of the date of issuance of this Restricted Order, the affected parties shall file an agreed redacted version for public viewing.

**SO ORDERED.**

David Shaw Digitally signed by David  
Shaw  
Date: 2022.08.03 17:42:55  
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David Shaw  
Chief Copyright Royalty Judge

DATED: August 3, 2022